IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 5457 OF 2007

Mrs. Priti Raju Patil .... Petitioner

versus

Raju Sitaram Patil..... Respondent.

Shri U.P.Warunjikar for the petitioner
Shri S.A.Sawant i/b.Siddharth Wokode for the respondent.

CORAM; A.P. DESHPANDE, J.
DATED; 03RD SEPTEMBER, 2007

P.C.;

1. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of parties.

2. The present petitioner is the wife whereas the respondent is the husband. Parties to the petition were married sometime in the year 2005 according to Hindu rights and customs. The parties are residing separately since March/April 2007 because of marital dispute. The respondent filed a petition seeking dissolution of marriage on the ground of cruelty and the same is pending before Family Court. In the said divorce petition, husband filed an application for temporary injunction seeking to restrain the wife from entering the matrimonial house which is a flat and/or

from inducting any other person in the said house. The Family Court has allowed the application at Exh.5 and granted injunction as prayed for in favour of the husband. It is this order which is challenged by filing the present writ petition.

3. Husband's case as is revealed from the plaint is that the wife is suffering from mental disorder and hence he had taken her to a psychiatric for treatment. It is the case of the husband that the petitioner wife had on many occasions given threat that she would commit suicide. The husband is a PSI and he had voiced his apprehension that unless and until the wife is restrained from entering the matrimonial house, the husband would suffer in as much as the threat is given by the wife in committing suicide. The Family Court had also appointed a Court Commissioner to find out as to whether the parties to the petition are residing in the matrimonial house. The Commissioner submitted a report after recording statements of the neighbours from which it is revealed that both the parties are not staying in the matrimonial flat during night time. However during day time they visit the flat in the absence of one another. Having found that the petitioner wife is not residing in the matrimonial flat at the relevant point f time, the Family Court has granted injunction as prayed for.

4. The learned counsel for the petitioner has submitted that there is no whisper in the impugned order about the mental condition of the petitioner wife or touching her ailment of mental disorder. The only reason as to why injunction order has been passed against the petitioner is that the petitioner at the relevant point of time was found to be staying with the parents and was not residing at the matrimonial house. According to the learned counsel for the petitioner, it cannot be a justification for granting injunction against the wife.

5. Per contra the learned counsel for the respondent has submitted that the main reason as to why the Family Court has granted injunction is that the Family Court found the apprehension of the husband, that the wife may commit suicide thereby landing him in trouble, is substantiated. Inviting my attention to para 16 of the order, it is submitted that the the trial court found the apprehension of the husband to be well founded about the wife’s threat to commit suicide and hence the order has been passed.

6. It is then submitted that the husband had placed on record of the court below, the medical certificate and other documents to indicate and substantiate the

mental disorder of the petitioner wife. Be it as it may, the order does not reflect any such material being considered by the court, who ultimately reached to a conclusion that it would be in the interest of justice to restrain the petitioner from entering the matrimonial house.

7. The learned counsel for the petitioner has also tried to introduce the subsequent events, by contending that though the petitioner has been staying along with the parents, since she left the matrimonial house, her father who was allotted a residential premises by his employer, has retired at the end of August 2007 and has to vacate the premises by 31-10-2007. It is submitted that in this fact situation, the petitioner would be needing a place of residence and thus the impugned order need to be interfered with.

8. After perusal of the impugned order, I am of the considered opinion that the Family Court should have considered the evidence and material placed on record, which has bearing on husband’s case that the wife is suffering from mental disorder. The only circumstance, that has been relied upon by the Family Court to grant injunction is that the wife has not been staying in the matrimonial house at the relevant

point of time, cannot by itself be a sufficient ground to grant injunction. The order of injunction could be sustained if the same is passed after taking into consideration the mental condition of the wife and the possibility of the wife's threat to commit suicide, is found to be real. In this view of the matter, the present petition is partly allowed. The impugned order passed by the Family Court dated 18-7-2007 is quashed and set aside. The matter stands remanded to the Family Court for adjudication of the application filed by the husband at Exh.5 afresh after offering an opportunity of hearing to the parties. Though the order dated 18-7-2007 is quashed and set aside, the statusquo order shall continue to operate for a period of four weeks from today, during which period the trial court shall decide the application at Exh.5 in the light of the observations made in this order. Rule made absolute in the above terms.

9. The petitioner is granted liberty to file affidavit before Family Court, and to bring on record the subsequent event in relation to the retirement of father of the petitioner and consequential need for the petitioner to vacate the parent's house. Needless to mention that the respondent as well shall be entitled to file reply to this contentions.

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